Supreme Court, U. S.
FILED
JUL 30 1980
MICHAEL RODAK, JR., CLERK

No. 79-2047

In The

Supreme Court of the United States

October Term, 1980

HELEN H. SIMMONS,
Petitioner,

vs.

STATE OF IOWA,
Respondent,

and

STATE OF IOWA, IOWA CONSERVATION COMMISSION, and GERALD JAURON,
Respondents on Petitioner's Counterclaim.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

BRIEF IN OPPOSITION

THOMAS J. MILLER,
Attorney General of Iowa

JOHN P. SARCONE,
Assistant Attorney General

ELIZABETH M. OSENBAUGH,
Assistant Attorney General

Hoover Building, Second Floor
Des Moines, Iowa 50319
(515) 281-5351

Counsel of record for Respondents

COCKLE PRINTING CO., 231. Douglas St., Omaha 68102

QUESTIONS PRESENTED

1. Whether the Iowa-Nebraska Boundary Compact precludes the application of Iowa law to determine the ownership of river channel formed in Iowa subsequent to that Compact and whether Petitioner can assert title good in Nebraska.

2. Whether the decisions quieting title in the State of Iowa constituted a taking without just compensation and whether that issue was properly presented below.

3. Whether the Seventh Amendment can be applied directly to state trials and, if so, whether the order of trial in this case violated the Seventh Amendment.

4. Whether the decisions below violated 42 U. S. C. § 1983 and whether this issue was properly presented below.

TABLE OF CONTENTS

	Pages
Questions Presented	i
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions	2
Statement of the Case	3
Summary of Argument	6
Argument	7
Conclusion	16
Statutory Appendix	App. 1

TABLE OF AUTHORITIES

CASES

Alexander v. Virginia, 413 U. S. 836 (1973)	14
Beck v. Alabama, — U. S. —, 48 U. S. L. W. 4801 n. 6 (June 20, 1980)	12
Board of Park Comm'rs v. Taylor, 133 Iowa 453, 108 N. W. 927 (1906)	10
Council Bluffs Savings Bank v. Simmons, 243 N. W. 2d 634 (Iowa 1976)	9
Mack v. Tredway, 244 Iowa 240, 56 N. W. 2d 678 (1953)	9
Minneapolis & St. L. R. R. v. Bombolis, 241 U. S. 211 (1916)	14
Mullaney v. Wilbur, 421 U. S. 684 (1975)	13

TABLE OF AUTHORITIES—Continued

Pages

Nebraska v. Iowa, 406 U. S. 117 (1972), final decree, 409 U. S. 285 (1973) 5, 6, 7, 8, 9, 10, 11

Orr v. Orr, 440 U. S. 268 (1979) 10

State of Iowa v. Simmons, 290 N. W. 2d 589 (Iowa 1980) 1

Street v. New York, 394 U. S. 576 (1969) 11

Tyson v. Iowa, 283 F. 2d 802 (8 Cir. 1960) 7, 8

Wilcox v. Pinney, 250 Iowa 1378, 98 N. W. 2d 720 (1959) 7

Woods v. Holy Cross Hosp., 591 F. 2d 1164, n. 12 (5 Cir. 1979) 14

STATUTES

28 U. S. C. § 1257 (3) 2

42 U. S. C. § 1983 ..... 2, 6, 15, 16

Section 448.16, Iowa Code 5, 13

Sections 614.12 and 614.17, Iowa Code, 1977 12

CONSTITUTION

Fifth Amendment, United States Constitution 2

Sixth Amendment, United States Constitution 15

Seventh Amendment, United States Constitution 2, 7, 14, 15

TABLE OF AUTHORITIES—Continued

Pages

Fourteenth Amendment, United States Constitution 2, 13, 14, 15

MISCELLANEOUS

Rule 14 (a) (3), Iowa Rules of Appellate Procedure, Iowa Code 11

Rules of the United States Supreme Court, Rule 21.5 ... 16

Iowa-Nebraska Boundary Compact of 1943 ... 2, 3, 4, 6, 10, 11

No. 79-2047

In The

Supreme Court of the United States

October Term, 1980

HELEN H. SIMMONS,

Petitioner,

vs.

STATE OF IOWA,

Respondent,

and

STATE OF IOWA, IOWA CONSERVATION COMMISSION, and GERALD JAURON,

Respondents on Petitioner's Counterclaim.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

BRIEF IN OPPOSITION

OPINIONS BELOW

The decision of the Iowa Supreme Court is reported as *State of Iowa v. Simmons,* 290 N. W. 2d 589 (Iowa 1980), and is reproduced in the appendix filed by Petitioner. That decision affirmed the decision of the Harrison County District Court in *State of Iowa v. Harrison County, Iowa, et al.,* printed in the Appendix to the Iowa Supreme Court (hereinafter cited as R.) at pages 154 to 160.

JURISDICTION

The judgment of the Iowa Supreme Court was entered on March 19, 1980. A timely petition for rehearing was denied en banc on April 17, 1980, and the petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U. S. C. § 1257 (3).

———o———

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Portions of the Fifth, Seventh, and Fourteenth Amendments are set forth in the Petition at page 3.

Portions of the Iowa-Nebraska Boundary Compact of 1943 are set out in Petitioner's Appendix C (A. 3-4).

The Civil Rights Act, 42 U. S. C. § 1983, provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Iowa statutes of limitation which Petitioner contends should have been applied to defeat the State's claim are lengthy. These are set forth in the statutory appendix to this brief.

STATEMENT OF THE CASE

Petitioner seeks review of a decision of the Iowa Supreme Court affirming the decision of the Harrison County District Court quieting title in the State of Iowa to an abandoned channel of the Missouri River. Although the area was in Nebraska prior to the 1943 Iowa-Nebraska Compact, all of the events by which either the State or Petitioner Simmons base claims to title occurred after the area was ceded to Iowa in 1943.

At the time of the 1943 Boundary Compact, the Missouri River was located in the Corps of Engineers' design channel. This design channel formed the agreed boundary under that Compact. The land involved in this case was transferred from the jurisdiction of Nebraska to Iowa by operation of the 1943 Compact. By 1949 the east or Iowa side of the design channel had begun to break out and flood the area in dispute. By 1954 the river had moved approximately one mile to the east and was flowing over the entire area. In 1958 and 1959 the Corps of Engineers diverted the river back into the design channel, leaving the contested area as abandoned river channel.

The State of Iowa claimed title to the abandoned channel under Iowa's doctrine of state ownership of riverbeds (*See,* A. 8-9). Helen Simmons, Petitioner herein (hereinafter Simmons), claimed ownership of the land by virtue of a 1954 quitclaim deed purchased after the river had moved across and destroyed the land previously existing in this area. The quitclaim deed was purchased from Harrison County, Iowa; that Iowa county's claim to the property was based upon tax deeds issued to itself in 1938

for allegedly delinquent taxes from 1924 to 1934, when the area was concedely located in the State of Nebraska and was therefore not subject to Iowa property tax. Simmons also claimed the property by adverse possession (the Iowa Supreme Court held this claim was abandoned on appeal, A. 13). The claimed adverse possession began after the area was inundated by the river. Simmons testified that in 1954 the land was mostly covered by water (R. 107). After 1959 the claimed acts of ownership consisted of chopping down small brush, planting vegetables, fishing, and hunting (R. 108). Simmons' own testimony confirmed the State's testimony that the State was claiming the land. She testified, "Well, as soon as the water had cleared out enough, we would post signs on our land at whatever point the State of Iowa had posted a sign." (R. 109). Simmons also specifically testified that she claimed adverse possession under the laws of the State of Iowa (R. 114).

The Harrison County District Court held that the Missouri River's movements between 1949 and 1954 completely destroyed the land which prior to the Compact was in Nebraska (R. 157). The land in question, the court held, was part of the bed of the Missouri River in 1954 (*Id.*). The Court found that the land was abandoned channel which under Iowa law belonged to the State (R. 157-158).

On appeal, the Iowa Supreme Court affirmed, holding that events subsequent to the 1943 Boundary Compact would be governed by the law of the state in which the land lies (A. 10); that the land which had once been in Nebraska was lost by erosion (A. 8-9); and that the area in question had become the bed of the river subsequent to 1943 (A. 8-9) and therefore, under Iowa law, is the prop-

erty of the State. As to Simmons' claim that certain statutes of limitation barred the State's action, the Court held that the cited chapter 614 provisions, made applicable by a 1970 statutory amendment, should not be construed to apply retrospectively to this lawsuit filed in 1965[1] (A. 12-13). The Court also held that the record did not support Simmons' claim of possession of the land, a prerequisite to application of the statute (A. 13). The Court rejected Simmons' "belated reliance" on section 448.16, Iowa Code, which bars certain claims adverse to tax deeds, because "The State's claim is bottomed on events which would divest her of title, no matter how valid it once was." (A. 13). The Court also stated that Simmons had abandoned her adverse possession claim, which also precluded her from relying on section 448.16, Iowa Code (A. 13).

The Iowa Supreme Court also held that the District Court properly exercised its discretion in determining to try the equitable issues raised by the quiet title action before the law issues raised by Simmons' 1977 Amendment to Answer and Counterclaim—namely damages for trespass and interference with the use and enjoyment of her property (A. 11-12).

———o———

1 The suit was continued pending the outcome of *Nebraska v. Iowa*, 406 U. S. 117 (1972), and was subsequently delayed by extensive pretrial litigation.

SUMMARY OF ARGUMENT

Respondents contend that the Iowa courts properly applied the law of Iowa to determine the legal consequences of river movements from 1949 to 1954 to property located within the boundaries of Iowa even though the area in question was in Nebraska prior to the 1943 Compact. This is consistent with the decision of this Court in *Nebraska v. Iowa,* 406 U. S. 117, 122, 125-126 (1972), final decree, 409 U. S. 285, 287-288 (1973), that Iowa law would govern questions of ownership of land formed after 1943 within the boundaries of the State of Iowa. Petitioner has no claim of Nebraska record title but instead claims by a 1954 quitclaim deed from Harrison County, Iowa, and by adverse possession dating from 1959 under Iowa law and not under the law of Nebraska. Not only does Petitioner have no valid claim of title good in Nebraska but also the Iowa Supreme Court, on another issue, found that the record did not support Simmons' claim of possession and held that Simmons had abandoned her claim of adverse possession in that court. Thus adequate and independent state grounds exist to deny Petitioner's claim of ownership.

Petitioners' contentions that the decision of the Iowa Supreme Court constitutes a taking without just compensation and violates 42 U. S. C. § 1983 raise no issues beyond those concerning interpretation of the compact. These issues were not properly presented to the Iowa Supreme Court. Again independent and adequate state grounds exist rendering resolution of any federal questions unnecessary.

Petitioner contends that the order of trial in the Iowa District Court violated the Seventh Amendment by denying her a jury trial. The Seventh Amendment does not apply to this state court trial. Petitioner has made no argument that the Iowa law regarding jury trials denied her due process of law. This question is without merit.

ARGUMENT

I. The decisions below do not misconstrue the Iowa-Nebraska Boundary Compact of 1943.

The Iowa Supreme Court held that, as to the effect on titles of river movements subsequent to 1943, Iowa law applies equally to all lands within the jurisdiction of Iowa, including land ceded by Nebraska. No attempt was made by the State of Iowa to dispute the validity of any Nebraska title. The State merely asserted, and the Iowa courts held, that the erosion of land in this area from 1949 to 1954 caused title to the river bed to pass to the State of Iowa (A. 8-9). Under Iowa law such erosion by the river divests the original owner of title. *Wilcox v. Pinney,* 250 Iowa 1378, 1382-83, 98 N. W. 2d 720, 723 (1959); *Tyson v. Iowa,* 283 F. 2d 802, 807 (8 Cir. 1960).

The application of Iowa law to events occurring in areas within the jurisdiction of Iowa after 1943 is clearly consistent with the Iowa-Nebraska Compact as construed by this Court in *Nebraska v. Iowa,* 406 U. S. 117 (1972), final decree at 409 U. S. 285 (1973). The Iowa Supreme Court noted that *Nebraska v. Iowa,* 406 U. S. at 122, 124,

distinguished between areas formed before and areas formed after 1943 in concluding that Iowa could not apply its doctrine of state ownership to defeat good Nebraska title to ceded land formed before that date (A. 9-10). Since this abandoned channel was created by events which occurred after 1943, Iowa clearly may apply its doctrine of state ownership to this land.

The conclusion of the Iowa courts that the law of Iowa controls events occurring within Iowa after 1943 is also supported by this Court's conclusion in *Nebraska v. Iowa,* 406 U. S. at 125-126, that Iowa law governs whether or not additions to Nebraska riparian land which extend across the Iowa boundary would pass to the riparian owner as accretion. Nebraska had asserted that Nebraska law should govern such additions to Nebraska riparian land, even though the additional land was located within Iowa, because the right to accretion was an incident of the Nebraska riparian owner's property rights. That contention was specifically rejected by this Court, which cited with approval *Tyson v. Iowa,* 283 F. 2d 802 (8 Cir. 1960), applying Iowa's law of state ownership to determine ownership of an island formed after 1943 on the Iowa side of the boundary. This Court's decision clearly confirmed the Iowa Supreme Court's choice of law for this case:

> The Court of Appeals for the Eighth Circuit held that the ownership of the island should be determined by the law of the State in which the land was situated, that is, by the law of Iowa, since the island was on the Iowa side of the Compact boundary. The Court of Appeals expressly rejected the same contention urged upon us by Nebraska, holding, in agreement with the District Court in the case, that "the Nebraska law of accretion did not operate to create riparian

> rights within the territorial limits of Iowa." 283 F. 2d at 811. Hence, whether the Nebraska riparian owner has title to the accretions that cross the boundary into Iowa is determined by Iowa law. Nebraska argues that Tyson was wrongly decided. We do not agree.

406 U. S. at 126. Thus, this Court squarely held in *Nebraska v. Iowa,* that Iowa law governs events occurring within the jurisdiction of Iowa after the compact date. *See Nebraska v. Iowa,* 409 U. S. 285, 287-288 (1973) (paragraphs 11 and 12 of final decree).

Even if this issue remained open for resolution after *Nebraska v. Iowa,* Petitioner cannot truly claim that she has good Nebraska title or that her title was divested by Iowa law. Petitioner's claim of record title is based on a Harrison County, *Iowa,* quitclaim deed.[2] She has no Nebraska record title. Furthermore, the Iowa quitclaim deed was purchased in 1954, eleven years after the compact date and after the existing land was eroded away and submerged by the river. Petitioner testified that the land was mostly under water at that time (R. 107).

Petitioner's only claim to Nebraska title is that she acquired such Nebraska title by adverse possession from Nebraska titleholders. Yet Petitioner testified that she

---

2 A quitclaim deed conveys only the interest of the grantor. *Mack v. Tredway,* 244 Iowa 240, 246-47, 56 N. W. 2d 678, 681 (1953). Harrison County's claim of title was by tax deed to itself in 1938, when the area was concededly in Nebraska. (Brief of Appellant at 13.) Therefore the land was not subject to taxation by Harrison County, Iowa. As the Iowa Supreme Court noted in this case, the 1954 tax deed to Simmons had been found void in a prior case. (A. 13 citing *Council Bluffs Savings Bank v. Simmons,* 243 N. W. 2d 634, 637 (Iowa 1976).)

claimed adverse possession *under Iowa law* (R. 114) and that her family first went on the land in 1959 (Brief of Appellant at 14-15), well after the land had been ceded to Iowa. The Iowa Supreme Court has specifically held that a person cannot adversely possess river beds or banks of navigable rivers against the State because the State holds title for the public. *Board of Park Comm'rs v. Taylor,* 133 Iowa 453, 464-65, 108 N. W. 927, 931 (1906). Clearly Petitioner cannot base her claim of ownership on Iowa's law of adverse possession and yet contend that, under *Nebraska v. Iowa,* Iowa's doctrines of state ownership are not applicable, especially when the land had become riverbed and thus state property before Petitioner obtained any alleged claim to the land.

Furthermore, Petitioner raised no issues on appeal to the Iowa Supreme Court regarding her claim of adverse possession although that court's review of this equity case was de novo. The Iowa Supreme Court concluded that Petitioner abandoned any adverse possession claim (A. 13). On a separate issue, the Iowa Supreme Court concluded that the record did not support Petitioner's claim of possession of the property in question (A. 13). Thus there are adequate and independent state grounds for denying Petitioner's claim thereby precluding a grant of certiorari on this issue. *Orr v. Orr,* 440 U. S. 268, 275-76 (1979).

The facts of this case clearly establish that Petitioner has no claim to good Nebraska title as of the compact date and therefore has no basis on which to assert any perceived violation of the Iowa-Nebraska Compact of 1943.

The Iowa Supreme Court's construction of the Iowa-Nebraska Compact is clearly correct. This Court has previously decided that Iowa law governs as to events occurring within the boundary of Iowa after 1943. *Nebraska v. Iowa,* 406 U. S. at 126. There is no reason for this Court to re-examine this issue at this time.

II. Petitioner cannot here assert that the decision of the Iowa Supreme Court constituted a taking of property in violation of the Federal Constitution.

Petitioner's takings argument is merely a repetition of her claim that the Iowa court misconstrued the Iowa-Nebraska Compact. On appeal to the Iowa Supreme Court (Brief of Appellant at 25) and in her petition here (Petition at 20), Petitioner has merely asserted that the allegedly erroneous interpretation of the Compact is a taking. Rule 14(a)(3), Iowa Rules of Appellate Procedure, Iowa Code, requires that an appellant's brief contain a statement of issues presented for review and specifically states, "Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of the issue." Since Petitioner did not state the takings issue as an issue for review (Brief of Appellant at 1-3) nor argued this issue, it was not properly presented for review in the Iowa Supreme Court. The Iowa Supreme Court did not discuss any taking question and merely stated that it had considered all issues raised and found none entitled Petitioner to relief (A. 14). Simmons concedes that the Iowa court did not rule on the question (Petition at 8-9). Certiorari jurisdiction under 28 U. S. C. § 1257(3) does not exist absent a final decision in the highest state court on the issue in question. *Street v.*

New York, 394 U. S. 576, 581-82 (1969); *Cf. Beck v. Alabama,* — U. S. —, 48 U. S. L. W. 4801, 4802-4803, n. 6 (June 20, 1980) (challenge to constitutionality of death penalty statute considered although not briefed in Alabama Supreme Court where Respondent State and Petitioner both claimed state court had fully considered the issue).

Even if the taking issue had been properly presented to and resolved by the Iowa Supreme Court, Simmons' argument raises no issues different from the first question presented and, therefore, should not be a basis for the grant of certiorari.

III. The Iowa court's construction of Iowa's statutes of limitation raise no issues cognizable in this Court.

The petition for certiorari alleges on page 21 that the Iowa Supreme Court's failure to apply certain Iowa statutes of limitation to defeat the State's claim deprives Petitioner of the equal protection of the law. This Court should not entertain this question because it was not presented to the Iowa Supreme Court on review of the District Court's similar ruling (Brief of Appellant at 1-3), it is not within the questions presented in this Court for review (Petition at 3-4), and the contention of Petitioner is without merit.

The Iowa Supreme Court refused to apply sections 614.12 and 614.17, Iowa Code, 1977, here because the statutes of limitation in question were not applicable until amendment in 1970, more than five years after the State's petition was filed (A. 12-13). The Iowa court's construc-

tion of the 1970 amendment as not having retrospective effect to pending litigation is binding on this Court. *Mullaney v. Wilbur,* 421 U. S. 684, 691 (1975). The Court also found that the record did not support Petitioner's claim of possession of the land, a condition precedent to operation of the statute (A. 13). Clearly the Court had a rational basis for declining to apply this statute of limitation to defeat the State's claim.

The Iowa Supreme Court also properly rejected Petitioner's argument that section 448.16, Iowa Code, barred the State's claim. That statute bars claims adverse to tax titles if such claims are not filed within a specified time period. The Iowa Court found this statute of limitation inapplicable because the State's claim was based on river movements subsequent to the purported tax sale which would divest Simmons of title, even if such title had once been valid (A. 13). The Court also noted that, since section 448.16 is an adverse possession statute, Petitioner, by abandoning her adverse possession claim, abandoned her reliance on that statute (A. 13).

The Iowa court's construction and application of these statutes of limitation clearly have a rational basis. There is no merit to Petitioner's contention that this decision violates the Equal Protection Clause of the Fourteenth Amendment. Petitioner's failure to raise the equal protection issue as a question presented and her failure to provide any argument to support this contention illustrate that resolution of this issue by this Court would serve no significant purpose.

IV. The Iowa Courts' decisions allowing trial first of the quiet title action to the Court did not violate the Seventh Amendment.

Petitioner contends the trial court's decision to first try the equitable quiet title issues raised by the petition and answer violated the Seventh Amendment. The legal issues relating to Petitioner's claims for trespass damages were first raised by counterclaim filed in 1977, twelve years after suit was filed. The trial court held the issue of title should be tried first. The Iowa Supreme Court held this was a proper exercise of the trial court's discretion under Iowa law (A. 11-12).

The Seventh Amendment is not applicable to the States. *Minneapolis & St. L. R. R. v. Bombolis,* 241 U. S. 211, 217 (1916); *Woods v. Holy Cross Hosp.,* 591 F. 2d 1164, 1171, n. 12 (5 Cir. 1979). See also *Alexander v. Virginia,* 413 U. S. 836 (1973) (per curiam) (trial by jury not constitutionally required in state civil proceeding to adjudge obscenity). That amendment has not been incorporated into the Due Process Clause of the Fourteenth Amendment. Since Petitioner alleges only a violation of the Seventh Amendment here, she cannot now contend that trying the equitable issues first denied her due process. However, Respondent would briefly note that the language and content of the Seventh Amendment militate against its application to states through incorporation into the Due Process Clause of the Fourteenth Amendment. The Seventh Amendment states as follows:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

The language used clearly limits its application to "any Court of the United States"—i. e., federal courts. This contrasts markedly with the Sixth Amendment which states, "In all criminal prosecutions, the accused shall enjoy the right to a speedly and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . ." The twenty-dollar threshold for applicability of the right to trial by jury would have much more profound impact on state courts than on federal courts whose jurisdiction is limited to that provided by Congress. Application of the Seventh Amendment to the states would prevent experimentation with small claims courts and other means of providing speedy and simple adjudication of legal issues. It would also be likely that incorporation of the Seventh Amendment would present so many hard cases in the context of the multitude of actions available in state courts that judicial construction of the right to jury trial available in federal courts would be weakened.

The Iowa Courts properly applied the law of Iowa in determining to try the equitable action first.

V. Petitioner's contention that the Iowa Supreme Court decision constitutes a violation of the Civil Rights Act, 42 U. S. C. § 1983, is without merit.

Petitioner contends that the decision of the Iowa Supreme Court divested her of title in violation of 42 U. S. C. § 1983. Again Petitioner fails to develop this argument in the petition here (Petition at 21). Petitioner did not raise this question as a separate issue on appeal to the Iowa Supreme Court but instead merely inserted this conclusion in her brief as part of the argument concerning interpretation

of the Compact (Brief of Appellant at 25). Petitioner concedes that the Iowa Supreme Court did not rule on the question (Petition at 7-8). The only violation of 42 U. S. C. § 1983 alleged in the pleadings concerned the grant of a temporary injunction (A. 19). Petitioner's contention that 42 U. S. C. § 1983 was violated does not properly present any issue for consideration by this Court since Petitioner has failed to present information necessary to an understanding of the point asserted. Rules of the United States Supreme Court, Rule 21.5. Either Petitioner seeks to utilize this as a broad question, allowing her to raise any constitutional issue she may later decide to argue, or this theory is merely repetitious of questions one to three since 42 U. S. C. § 1983 would not provide any greater remedy than would reversal under any of the specific questions presented.

CONCLUSION

For all of the above stated reasons, Respondents State of Iowa, Iowa Conservation Commission, and Gerald Jauron respectfully request this Court to deny the Petition for a Writ of Certiorari to the Iowa Supreme Court.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

JOHN P. SARCONE
Assistant Attorney General

ELIZABETH M. OSENBAUGH
Assistant Attorney General

Hoover Building, Second Floor
Des Moines, Iowa 50319
(515) 281-5351

Counsel of record

STATUTORY APPENDIX

Section 448.3, Iowa Code, 1977, provides:

> 448.3 *Execution and effect of deed.* The deed shall be signed by the treasurer as such, and acknowledged by him before some officer authorized to take acknowledgments, and when substantially thus executed and recorded in the proper record in the office of the recorder of the county in which the property is situated, shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the land conveyed, subject to all restrictive covenants, resulting from prior conveyances in the chain of title to the former owner, and all the right, title, interest, and claim of the state and county thereto.

Section 448.15, Iowa Code, 1977, provides:

> 448.15 *Affidavit by tax-title holder.* After two years from the issuance and recording of a tax deed or an instrument purporting to be a tax deed issued by a county treasurer of this state, the then owner or holder of such title or purported title may file with the county recorder of the county in which such real estate is located an affidavit substantially in the following form:
>
> State of Iowa, }
> ..... County. } ss.
>
> I, ..., being first duly sworn, on oath depose and say that on ..... (date) the county treasurer issued a tax deed to ..... (grantee) for the following described real estate:
>
> .....
> .....;
>
> that said tax deed was filed for record in the office of the county recorder of ..... county, Iowa, on ..... (date), and appears in the records of that office in ..... county as recorded in Book .....

Page ..... of the ..... Records; and that ..... is now in possession of such real estate and claims title to the same by virtue of such tax deed, or such purported tax title.

Any person claiming any right, title, or interest in or to such real estate adverse to the title or purported title by virtue of such tax deed referred to herein shall file a claim of the same with the recorder of the county wherein such real estate is located, within one hundred twenty days after the filing of this affidavit, such claim to set forth the nature thereof, also the time and manner in which such interest was acquired.

.....

Subscribed and sworn to before me this ..... day of ....., 19.....

.....

Notary Public in and for ..... County, Iowa.

Section 448.16, Iowa Code, 1977, provides:

448.16 *Claims adverse to tax title barred.* When such affidavit is filed it shall be notice to all persons, and any person claiming any right, title, or interest in or to such real estate adverse to the title or purported title by virtue of such tax deed hereinabove referred to, shall file a claim of the same with the county recorder of the county in which such real estate is located within one hundred twenty days after the filing of such affidavit, which claim shall set forth the nature thereof, the time when and the manner in which such interest was acquired.

At the expiration of said period of one hundred twenty days, if no such claim has been filed, all persons shall thereafter be forever barred and estopped from having or claiming any right, title, or interest in such real estate adverse to the tax title or purported tax title, and no action shall thereafter be brought to

recover such real estate, and the then tax-title owner or owner of the purported tax title shall also have acquired title to such real estate by adverse possession.

Section 614.1 (5), Iowa Code, 1977, provides:

5. *Written contracts—judgments of courts not of record—recovery of real property.* Those founded on written contracts, or on judgments of any courts except those provided for in the next subsection, and those brought for the recovery of real property, within ten years.

Section 614.17, Iowa Code, 1977, provides:

614.17 *Claims to real estate antedating 1960.* No action based upon any claim arising or existing prior to January 1, 1960, shall be maintained, either at law or in equity, in any court to recover any real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession, when such holder of the record title and his grantors immediate or remote are shown by the record to have held chain of title to said real estate, since January 1, 1960, unless such claimant, by himself, or by his attorney or agent, or if he be a minor or under legal disability, by his guardian, trustee, or either parent shall within one year from and after July 1, 1970, file in the office of the recorder of deeds of the county wherein such real estate is situated, a statement in writing, which shall be duly acknowledged, definitely describing the real estate involved, the nature and extent of the right or interest claimed, and stating the facts upon which the same is based.

For the purposes of this and sections 614.18 to 614.20 any person who holds title to real estate by will or descent from any person who held the title of record to such real estate at the date of his death or who holds title by decree or order of any court, or under any tax deed, trustee's, referee's, guardian's,

executor's, administrator's, receiver's, assignee's, master's in chancery, or sheriff's deed, shall be deemed to hold chain of title the same as though holding by direct conveyance.

For the purposes of this section, such possession of said real estate may be shown of record by affidavits showing such possession, and when said affidavits have been filed and recorded, it shall be the duty of the recorder to enter upon the margin of said record, a certificate to the effect that said affidavits were filed by the owner in possession, as named in said affidavits, or by his attorney in fact, as shown by the records and in like manner, such affidavits may be filed and recorded where any action was barred on any claim by this section as in force prior to July 1, 1970.

Section 614.20, Iowa Code, 1977, provides:

614.20 *Limitation on Act.* Provided, however, that nothing contained in sections 614.17 to 614.19 shall be construed as limiting or extending the time within which actions by a spouse to recover dower or distributive share in real estate within this state may be brought or maintained under the provisions of section 614.15, or as limiting or extending the time within which actions may be brought or maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate under the provisions of section 614.21, and provided further, that sections 614.17 to 614.19 should in no case revive or permit an action to be brought or maintained upon any claim or cause of action which is barred by any statute which is in force prior to July 1, 1970; provided that nothing contained in sections 614.17 to 614.19 shall affect pending litigation.

Section 614.22, Iowa Code, 1977, provides:

614.22 *Action affecting ancient deeds.* No action shall be maintained to set aside, cancel, annul, declare

void or invalid, or to redeem from any tax deed, guardian's deed, executor's deed, administrator's deed, receiver's deed, referee's deed, assignee's deed, sheriff's deed which shall have been recorded in the office of the recorder of the county or counties in this state in which the land described in such deed is situated prior to January 1, 1960, unless such action shall be commenced prior to January 1, 1971, and if no action to set aside, cancel, annul, declare void or invalid, or to redeem from any such deed shall be commenced prior to January 1, 1971, then such deed and all the proceedings upon which the same is based shall be conclusively presumed to have been in all things valid and unimpeachable and effective to convey title according to the purport thereof, without exception for infancy, mental illness, absence from the state, or other disability or cause; provided that this and section 614.23 shall not apply to any real property described in any such deed which is not on July 1, 1970, in the possession of those claiming title under such deed.